

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT OF PURCHASE AND SALE (this “Amendment”) is made effective this ____ day of _____, 2020 (the “Amendment Effective Date”) by and between CITY OF BRECKSVILLE, OHIO, an Ohio municipal corporation (“City”), BRECKSVILLE COMMUNITY IMPROVEMENT CORPORATION, an Ohio non-profit community improvement corporation (“CIC”) and DIGERONIMO DEVELOPMENT LLC (“Developer”), an Ohio limited liability company.

RECITALS

- A. CIC, City and Developer have entered into that certain Development Agreement dated as of June 19, 2018 (the “Development Agreement”), whereby City and CIC granted certain development rights to Developer on approximately 103.049 acres of real property located in the City of Brecksville, Cuyahoga County, Ohio as more fully described in the Development Agreement and defined therein as the Site.
- B. CIC, as buyer, and Crowland Ltd. (“Crowland”), as seller, have entered into that certain Agreement of Purchase and Sale dated as of January 24, 2020, as amended (the “Purchase Agreement”), whereby Crowland granted the right to CIC or its assigns to purchase certain real property located on Miller Road, City of Brecksville, Cuyahoga County, Ohio, as more fully described on Exhibit A attached hereto and incorporated herein by reference or as otherwise described in the deed to CIC and defined herein as the “Additional Property.”
- C. CIC, City and Developer desire to amend the Development Agreement in order to among other things, include the Additional Property as a part of the Site, under the terms and conditions of the Development Agreement.
- D. The parties have agreed to enter into this Amendment to amend the Development Agreement with respect to such matters as are specifically set forth herein.

TERMS OF AGREEMENT

NOW, THEREFORE, CIC, City and Developer, intending to be legally bound, and for valid consideration, hereby agree as follows:

- 1. On the date that the Additional Property is conveyed to CIC, the Additional Property shall be deemed to be included in the definition of the “Site” under the Development Agreement, except with respect to the following provisions of the Development Agreement: Sections 3.2, 5.4, 5.5, and Article 8 and any necessary definitions that pertain to such sections.
- 2. CIC, City and Developer agree that Project Development Plan and Project Development Schedule shall be further updated as mutually agreed upon by the parties.
- 3. A new Section 4.3.6.9 shall be added to the Development Agreement as follows:

4.3.6.9 Notwithstanding the provisions of Sections 4.3.6.1-4.3.6.8 of this Agreement, a proposal for a Phase Development Plan may only contain conceptual development plans for the Phase Parcel and otherwise contain such information as reasonably acceptable to the Parties.

4. A new Section 4.6 shall be added to the Development Agreement as follows:

4.6 Developer's Right to Rescind Phase Development Plan and Phase Approval. Notwithstanding anything contained in this Agreement to the contrary, Developer, at its sole discretion, shall have the right to provide written notice to CIC and City of its election to unilaterally rescind a Phase Development Plan submission and its approval to any Phase Approval for such Phase Development Plan prior to the conveyance of such Phase Parcel from CIC to Developer or Developer's Affiliates.

5. A new sentence shall be added at the end of Section 8.2 of the Development Agreement as follows:

Notwithstanding anything contained herein to the contrary, the Parties agree that the Project Development Schedule and Developer's requirement pertaining to completion of the demolition of the pump station and smoke stack located on the Property in accordance with the Demolition and Remediation Obligations shall be extended to a mutually agreeable date by CIC and Developer.

6. CIC and City hereby represent, warrant, and agree that, to their respective knowledge, there exists no breach, default, or event of default by Developer under the Development Agreement, and no event or condition exists which, with notice or passage of time or both, would constitute a breach, default, or event of default by Developer under the Development Agreement. Developer hereby represents, warrants and agrees that, to Developer's knowledge, there exists no breach, default, or event of default by CIC or City under the Development Agreement, and no event or condition exists which, with notice or passage of time or both, would constitute a breach, default, or event of default by CIC or City under the Development Agreement.
7. Except as expressly supplemented, amended or modified by this Amendment, the Development Agreement shall continue in full force and effect. CIC, City and Developer do hereby ratify and affirm the terms, covenants, conditions and obligations of the Development Agreement, except as otherwise set forth herein. In the event of any conflict between any provision of the Development Agreement and any provision of this Amendment, the provision of this Amendment shall prevail.

8. This Amendment may be executed in counterparts, each of which shall be an original, but all of which when taken together shall constitute one and the same document. The parties agree to accept electronic copies or facsimile copies of the fully signed Amendment as originals of the document.
9. Capitalized terms used herein but not otherwise defined in this Amendment shall have the meanings ascribed to them in the Development Agreement.

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IN WITNESS WHEREOF, the parties agree that this Amendment shall be dated and effective as of the date first set forth above.

CITY:

CITY OF BRECKSVILLE OHIO

By: _____

Name: _____

Its: _____

CIC:

**BRECKSVILLE COMMUNITY
IMPROVEMENT CORPORATION**

By: _____

Name: _____

Its: _____

DEVELOPER:

DIGERONIMO DEVELOPMENT LLC

By: _____

Name: _____

Its: _____

Situated in the City of Brecksville, County of Cuyahoga and State of Ohio and known as being part of Original Brecksville Township Lots 48 and 55 are bounded and described as follows:

Beginning at an iron monument found at the southeasterly corner of said Original Lot 55, being also a point in the centerline of Miller Road, variable width, at its intersection with the original centerline of Brecksville Road, 66 feet wide, (now 100 feet wide);

Thence South 89 degrees 36 minutes 51 seconds West along the centerline of Miller Road, 1614.83 feet to a point;

Thence North 0 degrees 18 minutes 51 seconds West, 50.00 feet to an iron pin set in the northerly line of Miller Road at its intersection with the westerly line of Parcel V-26 of land conveyed to the United States of America by deed recorded in Volume 8495, Page 625 of Cuyahoga County Records, and the principal place of beginning of the parcel herein described;

Thence South 89 degrees 36 minutes 51 seconds West along the northerly line of Miller Road, 150.01 feet to an iron pin set at an angle point, therein;

Thence North 0 degrees 19 minutes 25 seconds West along the northerly line of Miller Road, 15.00 feet to an iron pin set at an angle point, therein;

Thence North 84 degrees 40 minutes 29 seconds West along the northerly line of Miller Road, 200.98 feet to an iron pin set at an angle point, therein;

Thence South 0 degrees 19 minutes 25 seconds East along the northerly line of Miller Road, 35.00 feet to an iron pin set at an angle point, therein;

Thence South 89 degrees 36 minutes 51 seconds West along the northerly line of Miller Road, 399.71 feet to an iron pin set at its intersection with the easterly line of Interstate Route 77, variable width;

Thence North 0 degrees 19 minutes 25 seconds West along the easterly line of Interstate Route 77, and the easterly line of a parcel of land conveyed to Bernice Schwager by deeds recorded in Volume 14658, Page 101 and A.F.N. 200402180390 of Cuyahoga County Records, 1059.29 feet to its intersection with the northerly line of said land so conveyed, and from which point an iron pipe found bears South 89 degrees 34 minutes 32 seconds West, 0.55 feet; South 0 degrees 25 minutes 28 seconds East, 0.38 feet;

Thence South 89 degrees 34 minutes 32 seconds West along the northerly line of said land conveyed to Bernice Schwager, 137.52 feet to its intersection with the westerly line of said land so conveyed, and from which point a capped iron pin found (Dempsey #6914) bears South 89 degrees 34 minutes 32 seconds West, 0.36 feet; South 0 degrees 25 minutes 28 seconds East, 0.59 feet;

Thence North 89 degrees 45 minutes 29 seconds East along said southerly of the Country Woods Subdivision Phase 4, and the southerly line of Block "A" in the Harvel Estates Subdivision as shown by the recorded plat in Volume 162, Page 15 of Cuyahoga County Map Records, 2759.21 feet to its intersection with the westerly line of a parcel of land conveyed to Lynda Gillinov by deed recorded in Volume 11836 Page 473 of Cuyahoga County Records, and from which point a capped iron pin found (Dempsey #6914) bears North 0 degrees 14 minutes 31 seconds West, 0.10 feet;

Thence South 0 degrees 05 minutes 00 seconds West along the westerly line of said land conveyed to Lynda Gillinov, 240.00 feet to an iron pin set at intersection with the northerly line of Parcel V-10 of said land conveyed to the United States of America;.

Thence South 89 degrees 45 minutes 29 seconds West along the northerly line of said land conveyed to the United States of America, 1172.69 feet to its intersection with the westerly line of said land so conveyed, and from which point an iron pin found bears South 0 degrees 17 minutes 43 seconds East 0.28 feet;

Thence South 0 degrees 17 minutes 43 seconds East along the westerly line of said land conveyed to the United States of America, 1639.35 feet to an angle point, therein, from which an iron pin found bears South 0 degrees 17 minutes 43 seconds East, 0.25 feet;

Thence North 89 degrees 34 minutes 32 seconds East along the westerly line of said land conveyed to the United States of America, 121.91 feet to an angle point, therein;

Thence South 0 degrees 18 minutes 51 seconds East along the westerly line of said land conveyed to the United States of America, 1059.80 feet to the principal place of beginning, and containing 85.6090 acres of land according to the survey by Donald G. Bohning & Associates, Inc. dated February, 2000

The courses used in this description are referenced to an assumed meridian and are used to indicate angles only.

(Permanent Parcel Nos. 604-08-001, 002, 003, 004 & 007; 604-07-007; 603-20-029; 603-21-022 and 603-20-030)